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In the Supreme Court of the United States

OCTOBER TERM, 1995

HIGHLAND FALLS-FORT MONTGOMERY CENTRAL SCHOOL DISTRICT, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

The Educational Agencies Financial Aid Act (Impact Aid Act), Pub. L. No. 81-874, 64 Stat. 1100, as amended, provided that, when congressional appropriations for the programs established by the Act were insufficient adequately to fund each program, the Secretary of Education was first to fund fully the Act's "Section 2" assistance program. In annual appropriation statutes for fiscal years 1989 through 1993, however, Congress appropriated a specific amount of money for the Section 2 program, and in each of those years the appropriation was less than 100%. The question presented is:

Whether, in fiscal years 1989 through 1993, the Secretary of Education correctly allocated, for Section 2 programs, only the amounts appropriated by Congress.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A11) is reported at 48 F.3d 1166. The oral ruling of the Court of Federal Claims (Pet. App. A12-A14) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 15, 1995. On May 8, 1995, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including June 15, 1995, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The Educational Agencies Financial Aid Act (Impact Aid Act or Act), Pub. L. No. 81-874, 64 Stat. 1100 (codified, as amended, at 20 U.S.C. 236 *et seq.*)[1] established a framework for "provid[ing] financial assistance with respect to the operating expenses of those local school agencies upon which Federal activities have placed an undue financial burden." S. Rep. No. 2458, 81st Cong., 2d Sess. 2 (1950). Section 2 of the Act, 20 U.S.C. 237 (1988 & Supp. V 1993), provided for federal assistance to school districts in which the value of real property acquired by the federal government since 1938 exceeded 10% of the assessed value of all real property in the district, where the federal acquisition placed "a substantial and continuing financial burden on [the district]," and certain other criteria were met. Districts determined by the Secretary of Education[2] to meet the requirements of the Section 2 program in a given fiscal year were entitled "to receive for such fiscal year such amount as, in the judgment of the Secretary, is equal to the [financial burden imposed on the district by the federal acquisition]." 20 U.S.C. 237(a). Other sections of the Act provided assistance to school districts experiencing increased attendance by children of persons who reside and work on federal property, 20 U.S.C. 238 (1988 & Supp V 1993), and by

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[1] The provisions of the Impact Aid Act relevant to this litigation were repealed, effective October 1, 1994, by the Improving America's Schools Act of 1994, Pub. L. No. 103-382, Tit. III, Pt. C, § 331(b), 108 Stat. 3965. The new provisions are codified at 20 U.S.C. 7701 *et seq.*

[2] Formerly the Commissioner of Education. See, *e.g.*, § 5, 64 Stat. 1107.

"sudden and substantial" increases in school attendance due to federal activities. 20 U.S.C. 239.

Section 5 of the Act established a methodology for addressing instances in which congressional appropriations for the Act's programs were insufficient to fund each program fully. The statutory language applicable to the period at issue here,[3] 20 U.S.C. 240(c)(1)(A), provided that "the Secretary shall first allocate to each local educational agency which is entitled to a payment under section 237 of this title [*i.e.*, the Section 2 program] an amount equal to 100 per centum of the amount to which it is entitled * * * for such fiscal year." After fully funding the Section 2 program, the Secretary was authorized to allocate funds pursuant to 20 U.S.C. 238 (children of persons who reside and work on federal property). 20 U.S.C. 240(c)(1)(B) and (C).

1. In its annual appropriation statutes for fiscal years (FY) 1989 through 1993, Congress failed to appropriate sufficient monies fully to fund entitle-

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[3] As originally enacted, the statute provided that when the funds appropriated for a fiscal year were insufficient, "the Commissioner [of Education] shall reduce the amounts which he certifies * * * for such year for payment to each local educational agency by the percentage by which the funds so appropriated are less than the total necessary to pay to such agencies the full amount to which they are entitled under this Act." § 5, 64 Stat. 1107. In subsequent years, Congress frequently amended the allocation provision, establishing various methodologies for addressing the problem of inadequate congressional appropriations. See, *e.g.*, Act of Aug. 8, 1953, ch. 402, § 7, 67 Stat. 534-535 (proportionate allocation of available appropriations among the Sections 2, 3, and 4(a) programs); Act of Aug. 21, 1974, Pub. L. No. 93-380, § 5, 88 Stat. 530-531 (tiered allocations of funds, with 25% of the funds being allocated in the first tier for the Sections 2 and 3 programs).

ments under the Act. Pet. App. A5. In lieu of appropriating a lump-sum amount for all of the Act's benefit programs, however, Congress allocated specific amounts for each program. *Ibid.* In FY 1989, for example, Congress appropriated $717 million for entitlements, $15 million of which was explicitly earmarked for the Section 2 program. See Act of Sept. 20, 1988, Pub. L. No. 100-436, 102 Stat. 1701 ("$15,000,000 shall be for entitlements under section 2 of said Act"). Aside from the amounts involved, the appropriations Acts for FY 1990 through 1993 used identical language.[4]

In the years 1989 through 1993, the Secretary of Education allocated funds under the Act as specified in the appropriations statutes. Accordingly, the Secretary did not apply the allocation formula set forth in Section 240(c)(1)(A). The Secretary interpreted Section 240(c)(1)(A) as applying only to instances in which Congress made a combined or lump-sum appropriation in a given year, and the combined appropriation fell short of full funding.[5] Had the Secretary applied the Section 240(c)(1)(A) formula, Section 2

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[4] See Act of Nov. 5, 1990, Pub. L. No. 101-517, 104 Stat. 2210 ("$17,000,000 shall be for Federal property payments under section 2"); Act of Nov. 26, 1991, Pub. L. No. 102-170, 105 Stat. 1128 ("$16,590,000 shall be for Federal property payments under section 2"); Act of Oct. 6, 1992, Pub. L. No. 102-394, 106 Stat. 1813 ($16,424,000 shall be for payments under section 2").

[5] For example, the FY 1977 appropriations Act, Act of Sept. 30, 1976, Pub. L. No. 94-439, 90 Stat. 1426-1427, provided $715,500,000 "for payments under sections 2, 3, and 4" of the Act. In those circumstances, in which one sum was appropriated for all programs, the Secretary considered Section 240(c)(1)(A) to be applicable.

school districts would have received greater amounts of federal funds.

2. The United States Military Academy at West Point is located in the Highland Falls-Fort Montgomery Central School District (the District), and accounts for half of the real property in the District. Since 1971, the District has annually sought and received federal funds under Section 2 of the Act. Pet. App. A5-A6.

Petitioners—the District and seven individual members of the Highland Falls-Fort Montgomery Board of Education—brought the instant suit in the Court of Federal Claims, challenging the Secretary's interpretation of Section 240(c)(1)(A). Petitioners sought the payment of $1,998,187 in Section 2 funds that, they alleged, would have been allocated to their district during fiscal years 1989 through 1993 if the Secretary had applied the Section 240(c) formula. Pet. App. A5, A6.

3. The Court of Federal Claims dismissed petitioners' complaint. Pet. App. A12-A14. The court concluded, *inter alia*, that neither the Impact Aid Act, nor Education Department regulations promulgated thereunder, 34 C.F.R. Pt. 222, mandated full funding of the Section 2 program. Pet. App. A12. Even assuming that the Act did require full funding, the court added, "it was superseded by the Appropriations Act." *Id.* at A13.

4. The court of appeals affirmed. Pet. App. A1-A11. Observing that it "ha[d] great difficulty imagining a more direct statement of congressional intent than the instructions in the appropriations statutes at issue here" (*id.* at A9), the court held that the Secretary's construction of the Impact Aid Act and appropriation statutes had given effect to the "unam-

biguously expressed intent" of Congress. *Ibid.* (quoting *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984)). The court also noted (Pet. App. A9-A11) that two additional federal statutes, 31 U.S.C. 1341(a)(1)(A) (1988 & Supp. V 1993) and 31 U.S.C. 1532, supported the Secretary's construction of the Impact Aid Act. Section 1341(a)(1)(A) provides that "[a]n officer or employee of the United States Government * * * may not * * * make or authorize an expenditure * * * exceeding an amount available in an appropriation * * * for the expenditure." Section 1532 states that "[a]n amount available under law may be withdrawn from one appropriation account and credited to another * * * only when authorized by law."

The court of appeals concluded that the Secretary's interpretation of Section 240(c) properly harmonized that provision with the appropriations Acts, as well as with the statutes barring the "raiding" of one appropriation account in order to credit another. Pet. App. A10-A11. Finally, the court rejected petitioners' contention that Section 240(c) should be construed to confer "transfer authority" on the Education Department to fund the Section 2 program fully by taking funds from other programs. The court concluded that the specific language of the subsequently enacted appropriations statutes precluded such an interpretation. Pet. App. A11.

ARGUMENT

The court of appeals correctly upheld the Secretary's construction of the Impact Aid Act. The court's decision, moreover, does not conflict with any

decision of this Court or of another court of appeals. Further review is therefore not warranted.

1. Petitioners contend (Pet. 21-27) that the court of appeals' decision is contrary to *TVA* v. *Hill*, 437 U.S. 153 (1978). Specifically, petitioners assert (Pet. 25) that the court of appeals erred by construing the appropriations statutes to "repeal by implication" the allocation provision of the Impact Aid Act. There is no conflict with *Hill*.

Contrary to petitioners' contention, the court of appeals did not conclude that the appropriation statutes implicitly or explicitly repealed Section 240(c). Rather, the court approved a construction of those provisions that effectuated the goals of each. Pet. App. A10; see *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974) ("When two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective."). Under that construction, the Act's allocation formula remained intact, to be utilized when Congress made a lump-sum Impact Aid Act appropriation. Only when, as in fiscal years 1989 through 1993, Congress appropriated specific sums to the Act's particular programs, did the Secretary interpret Section 240(c) not to be controlling. Because it preserves the validity of both Section 240(c) and the explicit appropriation statutes, the court of appeals' decision does not implicate *Hill*'s admonition that "repeals by implication are not favored." 437 U.S. at 189 (quoting *Morton* v. *Mancari*, 417 U.S. at 549).

2. Petitioners renew their contention (Pet. 23) that Section 240(c) "constitutes clear transfer authority," directing the Secretary fully to fund the Section 2

program, notwithstanding the subsequently enacted appropriation statutes. That contention lacks merit.

"The power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." *Morton* v. *Ruiz*, 415 U.S. 199, 231 (1974). Accordingly, this Court held in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, *supra*, that where Congress has not expressed its intention as to the precise question at issue, the courts are to defer to a reasonable legislative interpretation by the agency charged with administering the program. 467 U.S. at 844. "[T]he Secretary's interpretation need not be the best or most natural one by grammatical or other standards * * *. Rather, the Secretary's view need be only reasonable to warrant deference." *Pauley* v. *BethEnergy Mines, Inc.*, 501 U.S. 680, 702 (1991).

As petitioners concede (Pet. 23), Congress was silent as to the way in which the Impact Aid Act's allocation provision, on the one hand, and the appropriations Acts, on the other, should be reconciled. In light of that ambiguity, the Secretary reasonably read Section 240(c)(1)(A) to apply only in instances in which Congress made a lump-sum appropriation. The court of appeals properly deferred to that interpretation.[6]

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[6] As the court of appeals noted (Pet. App. A9-A11), petitioners' interpretation of Section 240(c) would violate two additional statutes—31 U.S.C. 1341(a)(1)(A), which makes it unlawful for an officer or employee of the United States to "make or authorize an expenditure or obligation exceeding an amount available in an appropriation * * *," and 31 U.S.C.

3. Finally, because the statutory provision on which petitioners rely, 20 U.S.C. 240(c)(1)(A), was repealed by the Improving America's Schools Act of 1994 (IASA), Pub. L. No. 103-382, § 331(b), 108 Stat. 3965, effective October 1, 1994, and there is no similar provision under current law, this case lacks prospective importance. Section 8002(b)(1)(B) of the IASA, codified at 20 U.S.C. 7702 (the successor to the Impact Aid Act), provides that if funds appropriated for Section 2 payments are insufficient fully to finance that program, "the Secretary shall ratably reduce the payment to each eligible local education agency." 20 U.S.C. 7702(b)(1)(B). The IASA contains no provision establishing priorities among categories of aid. Accordingly, the question presented by this case is unlikely to recur, and does not warrant this Court's review.

1532, which provides that "[a]n amount available under law may be withdrawn from one appropriation account and credited to another * * * only when authorized by law." Petitioners offer no justification for a construction of Section 240(c) that is contrary to those statutes.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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